## **United States Department of Labor Employees' Compensation Appeals Board**

M.A., Appellant	)
	)
and	) <b>Docket No. 17-0003</b>
	) <b>Issued: February 15, 2017</b>
U.S. POSTAL SERVICE, POST OFFICE,	)
San Diego, CA, Employer	)
	_ )
Appearances:	Case Submitted on the Record
Appellant, pro se	
Office of Solicitor, for the Director	

## **ORDER REMANDING CASE**

## Before:

CHRISTOPHER J. GODFREY, Chief Judge PATRICIA H. FITZGERALD, Deputy Chief Judge COLLEEN DUFFY KIKO, Judge

On October 2, 2016 appellant filed a timely appeal of an August 30, 2016 nonmerit decision of the Office of Workers' Compensation Programs (OWCP) which found that her request for reconsideration was untimely filed and failed to demonstrate clear evidence of error. The Board docketed the appeal as No. 17-0003.

The Board has reviewed the record on appeal and finds that the case must be remanded to OWCP for application of the appropriate standard of review because appellant's request for reconsideration was timely submitted. Section 10.607(a) of OWCP's implementing regulations provide that an application for reconsideration must be received within one year of the date of OWCP's decision for which review is sought.<sup>1</sup>

The most recent OWCP decision on the merits of appellant's claim was issued on May 29, 2015. By that decision it denied appellant's traumatic injury claim, finding the evidence of record insufficient to establish that the event occurred as described.<sup>2</sup> On May 27, 2016

<sup>&</sup>lt;sup>1</sup> 20 C.F.R. § 10.607(a).

<sup>&</sup>lt;sup>2</sup> On March 30, 2015 appellant, then a 38-year-old city letter carrier, filed a traumatic injury claim (Form CA-1) alleging that she was attacked by a dog on March 28, 2015, and this caused left and right upper extremity injuries and post-traumatic stress disorder.

appellant submitted a request for reconsideration.<sup>3</sup> In its August 30, 2016 decision, OWCP denied appellant's reconsideration request because it was untimely filed and failed to demonstrate clear evidence of error. The request for reconsideration was received by OWCP on May 27, 2016, within one year of the May 29, 2015 OWCP merit decision. Appellant also submitted additional factual and medical evidence that day.

Because appellant's May 27, 2016 reconsideration request was timely filed, the case will be remanded to OWCP for application of the standard for reviewing timely requests for reconsideration.<sup>4</sup> The "clear evidence of error" standard utilized by OWCP in its August 30, 2016 decision is appropriate only for untimely reconsideration requests. After such further development as OWCP deems necessary, it should issue an appropriate decision.

**IT IS HEREBY ORDERED THAT** the August 30, 2016 decision of the Office of Workers' Compensation Programs is set aside, and the case is remanded to OWCP for further proceedings consistent with this order of the Board.

Issued: February 15, 2017

Washington, DC

Christopher J. Godfrey, Chief Judge Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge Employees' Compensation Appeals Board

<sup>&</sup>lt;sup>3</sup> The Board notes that the request for reconsideration was scanned into iFECS as "Environ Studies/Maps/Phys Evid."

<sup>&</sup>lt;sup>4</sup> See 20 C.F.R. § 10.606(b)(3) (an application for reconsideration must show that OWCP erroneously applied or interpreted a specific point of law, advance a relevant legal argument not previously considered by OWCP, or include the submission of relevant and pertinent new evidence not previously considered by OWCP).